

WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

Water Quality Program Policy

Chapter 1

WQP Policy 1-25

Resource contact: Melissa Gildersleeve

Effective: October, 2002

References: SB 6609, Laws of 2002

Revised:

Dispute Resolution Related to Total Maximum Daily Loads (TMDLs) or Water Cleanup Plans

Purpose: To establish a mechanism by which a local entity or citizen can ask for reconsideration of final TMDL/Water Cleanup Plan reports developed by the Department of Ecology (Ecology) and/or bring a dispute of a procedural step in the TMDL/Water Cleanup Plan process. This applies to all final TMDL reports, including the following: quality assurance project plan, technical study report, EPA submittal report, and effectiveness monitoring report. (Reference: SB 6609, Laws of 2002)

TMDLs, or water cleanup plans, require meaningful public participation and involvement opportunities for watershed planning groups, local governments and other affected citizens. These opportunities are outlined in Ecology's TMDL Guidance Document. All information relating to development of a TMDL is open for public review, including data precision, computer models, and assumptions used. If there is a technical or procedural dispute or disagreement arising from a TMDL project it may be presented to Ecology for review, in accordance with this policy.

The normal and preferred sequence for resolving differences or providing additional information for consideration is to work with Ecology's representatives involved with the TMDL development and to raise issues during routine public comment periods. A local entity or citizen may address concerns or differences of opinion directly to the regional office TMDL lead or the technical staff for clarification. Issues may be raised and expressed verbally or during public comment periods by phone, email, or written correspondence. If it is determined that the responses are inadequate or unclear, an appointment may be made with Ecology's Water Quality Program regional office supervisor to further review the issue. Should this review not resolve the issue, then the local entity or citizen should follow the below procedures to file a formal dispute.

We encourage people to let us know right away if they have problems with any procedures.

Application:

1. Time constraints, requirements and process when filing written disputes .

- A. When a local entity or citizen wishes to formally dispute a procedural step or final report developed by Ecology, the aggrieved party shall file a formal written dispute,

addressed to the Ecology Director, within 30 days from the date the final report was made public, or for procedural disputes, as appropriate to the timing of the procedural step.

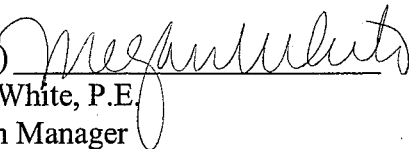
- B. The written dispute shall include the following items:
1. Reason for the dispute;
 2. An indication of how this concern was raised during prior involvement opportunities in the TMDL process;
 3. Citations of applicable state or federal laws, regulations or guidance, as well as appropriate portions of Water Quality Program policies, procedures and guidelines;
 4. Copies of all related correspondence and backup information;
 5. The outcome or resolution desired; and
 6. If desired, a request to make an oral presentation to the Dispute Resolution Panel (either in person or by conference call). Indicate who will be presenting your dispute to the panel.
- C. If the party requests an oral presentation, the Water Quality Program Dispute Resolution Coordinator will schedule up to a half day meeting with the Dispute Resolution Panel within 30 days (if schedules permit) from the date the dispute was logged, and provide written notice to the disputing party of the meeting time and place.
- D. Structure of dispute resolution process:
1. Disputes heard by the Dispute Resolution Panel are for the sole purpose of orally presenting each point of view. No cross-questioning will be allowed, except for clarification. Only the Dispute Resolution Panel may ask questions.
 2. Presentations will be brief and discuss only information relevant to the dispute.
 3. The Dispute Resolution Panel will review all written materials (and comments presented at the oral presentation if applicable), and make a recommendation to the Ecology Director on the resolution of the issue. The Dispute Resolution Coordinator will forward a written summary of the recommendation to the Ecology Director for a final decision.
 4. The Ecology Director will make a formal final decision. The Dispute Resolution Coordinator will forward a copy of the Ecology Director's decision to the disputing parties and other participants. This letter shall be sent within 30 days of the oral presentation or within 60 days of the receipt of the written dispute, unless longer timeframes are agreed to by the parties.
 5. If the dispute or the decision indicate that a change is needed in technical work, policies, procedures, or guidelines, Ecology will incorporate the Director's decision accordingly.

2. **Responsibilities**

- **Dispute Resolution Coordinator**: The Dispute Resolution Coordinator is the Watershed Management Section Manager of the Water Quality Program. The Coordinator will:

1. Maintain a dispute log;
 2. Provide copies of the dispute and other materials to all parties involved in the dispute resolution process;
 3. Schedule a meeting of the Dispute Resolution Panel and an oral presentation date (if requested);
 4. Maintain a record of the dispute resolution meeting and the Panel recommendation and forward it to the Ecology Director;
 5. Prepare a transmittal letter and mail the final decision of the Director to the parties to the dispute;
 6. Maintain a copy of the final decision, pertinent correspondence, meeting records, and a listing of pertinent facts or documents considered in the decision; and
 7. Notify appropriate Ecology staff of the dispute and the decision for follow-up action.
- **Program Staff:** The Ecology staff person who is central to the disputed decision or process (usually a TMDL project lead, or technical project manager) will:
 1. Prepare his/her response to the dispute in writing or before the Dispute Resolution Panel; and
 2. Take any necessary follow-up action to implement the Director's decision.
 - **Dispute Resolution Panel:** The three to five member Dispute Resolution Panel, named by the Ecology Director, will review the dispute and act as an advisory group to the Director. The panel will consist of the following (panel makeup may depend on the nature of the dispute – process, policy, public involvement, or technical issues):
 1. Water Quality section manager from an Ecology regional office not involved in the dispute;
 2. Environmental Assessment Program section manager;
 3. External representative familiar with TMDLs but not involved in the dispute will be invited;
 4. Ecology Director's designee.
 5. Ecology staff person with expertise in the subject area of the dispute but not involved in the specific issue.
 - **Ecology Director:** The Ecology Director receives the recommendations of the Panel and makes the final decision on the dispute. The decision document will address each element of a dispute involving multiple components.

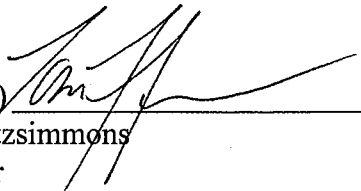
Approved:

(Signed) 
Megan White, P.E.
Program Manager
Water Quality Program
Department of Ecology

Date

10/29/02

Approved:

(Signed) 
Tom Fitzsimmons
Director
Department of Ecology

Date

10-29-02